

REMARKS

Claims 1-6 and 11 are pending in the application. Claims 7-10 have been cancelled.

Election/Restriction

In response to the Outstanding Restriction Requirement, Applicants elect **with traverse** the species drawn to a method of using *Chaetoceros gracilis* and specifically to claims 1, 2-6.

The Applicants respectfully point out that claims 1 and 2, drawn to a method of using *Chaetoceros gracilis* and *Skeleonema costatum* respectively, have been amended to be dependent on new claim 11 directed to a method of using a diatomaceous algae. *Chaetoceros gracilis* and *Skeleonema costatum* are two specific species of diatomaceous algae, the use of which is exemplified in the present application. Consequently, the claims are now directed to the production of distinct polyunsaturated fatty acids with diatomaceous algae, wherein said diatomaceous algae can be *Chaetoceros gracilis* or *Skeleonema costatum*. Claim 11 encompassing the scope of both claims 1 and 2, it is believed that claim 11 brings unity of invention inasmuch as claim 11 is inventive over the Lombardi reference cited. In this respect, Lombardi only notes an increase in triglycerides. Lombardi does not teach a method for producing polyunsaturated fatty acids from diatomaceous algae, comprising the step of applying at least one growth-limiting factor to a culture of diatomaceous algae at the end of the exponential growth phase, causing the stocking by said algae in culture of polyunsaturated fatty acids. The Applicants also submit a Declaration by Dr. Réjean Tremblay presenting evidence demonstrating that another member of the diatomaceous algae family (*Thalassiosira pseudonana*), when stimulated following the teachings recited in the present application, will produce polyunsaturated fatty acids. Thus, the Applicants believe that, as supported in the present description and as demonstrated in the Declaration, they have described and exemplified a method of use of diatomaceous algae to produce polyunsaturated fatty acids in the present description and thus are entitled to claim same.

Furthermore, the Applicants wish to respectfully point out that the Examiner, on page 2 of the pending Office Action, clearly stated that “*the species are deemed to lack Unity of Invention because they are not so linked as to form a single inventive concept under PCT Rule 13.1.*” In this regard, it is respectfully submitted that no such rejection was raised in the

International Preliminary Examination Report during prosecution of the corresponding PCT Application. Consequently, it is believed that the U.S. Examiner is applying a double standard regarding PCT Rule 13.1 since in the U.S., it seems that the application is directed to multiple species whereas during the International phase of the corresponding PCT Application, no such rejection was raised. In addition, the Examiner mentioned that the use of *Chaetoceros gracilis*, using any growth-limiting factor, is known, citing the reference of Lombardi *et al.* In this regard, the Applicants submit that, as acknowledged by the Examiner, the reference of Lombardi *et al.* was cited in the International Preliminary Examination Report. Again, it seems that the application is directed to multiple species according to the Examiner whereas during the International phase of the corresponding PCT Application, no such rejection was raised based on the disclosure of the mentioned reference. In this matter, it is again believed that the U.S. Examiner is applying a double standard regarding PCT Rule 13.1. In any event, claim 11 has now been introduced to include both species of algae, bringing unity of invention to the claims. The Applicants have exemplified results with 2 species of diatomaceous algae which should support new claim 11. Should the Examiner disagree, further results on another diatomaceous algae is being provided herewith in a 1.132 Declaration by the inventor, proving the invention is still operable, allowing the Applicants to claim broadly the species in the method. Reconsideration and withdrawal of the Examiner's restriction are earnestly solicited.

In view of the foregoing, Applicants respectfully submit that all the pending claims should be examined and are in condition for allowance. Early and favourable action is requested.

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Date: February 19, 2008

Respectfully submitted,

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